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Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term 1996

Steven F. Ethier
Petitioner
v
Kathleen Ann Larson
State of Minnesota
Respondents

On Petition for Writ of Certiorari to the Supreme Court of Minnesota

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Petition for Writ of Certiorari

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43 pp

Issue

Does the freedom of speech and of the press limit the power of a state court to issue and enforce a harassment restraining order?

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Facts

Timothy David (Butch) Greeler and Kathleen Ann Larson (actual date of birth: 7-26-44, not 7-26-54 as in her petition and affidavit at page A-11) are unmarried cohabitants at in Minneapolis.

The petitioner, Mr. Greeler and respondent Larson were cab drivers at All City Cab. Because Mr. Greeler with respondent Larson were violating Minn Stat § 609.34 (at page ?), the petitioner sent her a copy of *The Cohabitation Trap* by Dr. Laura Schlessinger, reprinted in *Cosmopolitan,* March 1994, from *Ten Stupid Things Women Do to Mess Up Their Lives,* (at page A-39). Dr. Schlessinger says, "Denial is a big factor in this live-in arrangement. And the styles of denial run from denial of one's own needs to denial of what he is really about."

Respondent Larson filed a petition for a restraining order. The petitioner moved to dismiss respondent Larson's petition, attaching an order finding that Mr. Greeler had abused his ex-wife and minor child. *Greeler v Greeler,* Hennepin County District Court File 169608 (1994) (at page A-34).

Mr. Greeler and respondent Larson left All City Cab. Shortly afterwards, Mr. Greeler drove a Viking Cab at the airport until the Social Security Administration learned that he had been driving cabs while collecting disability benefits.

Mr. Greeler did *not* testify at the hearings. Respondent Larson never defended him.

While the proceedings were pending, John Charles Haggerty, an Airport Cab driver and a reputed enforcer for the Hells Angels weighing more than 300 pounds, personally visited the petitioner at a cab stand in Prior Lake, Minnesota, and verbally threatened him by telling him that Mr. Haggerty belongs to an organization which at times might get violent, and that, if the petitioner receives any further visits, other members of the organization would be the visitors.

Mr. Greeler and Jeffrey J. LaValle, whom All City Cab had fired, later left messages on the petitioner's answering service saying, "We are coming to get you . . . ."

The petitioner raises questions relating to the freedom of speech and press protected by the First Amendment. The trial court's sole holding is that Minn Stat § 609.748 is constitutional. The Minnesota Court of Appeals affirmed, saying that he has no right to express "opinions and propaganda" and that the restraining order "leaves open ample alternative channels for communication."

Argument

Yes, but her son is worse deceived;
His folly must be seen to be believed.
In late troubles, he played an able part
And served his king with wise and loyal heart,
But he's quite lost his senses since he fell
Beneath Tartuffe's infatuating spell.
He calls him brother, and loves him as his life,
Preferring him to mother, child, or wife.
In him and him alone will he confide;
He's made him his confessor and his guide;
He pets and pampers him with love more tender
Than any pretty mistress could engender,
Gives him the place of honor when they dine,
Delights to see him gorging like a swine,
Stuffs him with dainties till his guts distend,
And when he belches, cries "God bless you, friend!"
In short, he's mad; he worships him; he dotes;
His deeds he marvels at, his words he quotes,
Thinking each act a miracle, each word
Oracular as those that Moses heard.
Tartuffe, much pleased to find so easy a victim,
Has in a hundred ways beguiled and tricked him,
Milked him of money, and with his permission
Established here a sort of Inquisition.

Molière, *Tartuffe*, Act I Scene 2, Richard Wilbur, trans (Dramatists Play Service, Inc., 1989)

I. The Right of Privacy

Minnesota prohibits fornication. Minn Stat § 609.34.

The Minnesota Supreme Court refused to enforce the provisions prohibiting marital status discrimination in the Minnesota Human Rights Act, Minn Stat § 363.03 subd 2(a), against a landlord whose religious "beliefs include that an unmarried couple living together or having sexual relations outside of marriage is sinful." *State by Cooper v French*, 460 NW2d 2, 3-4 (Minn 1990).

> This court, . . ., has consistently looked to the legislature's policy of discouraging the practice of fornication and protecting the institution of marriage. *Kraft, Inc. v State ex rel Wilson*, 284 NW2d 386, 388 (Minn 1979) (8-0 decision).

French, 460 NW2d 2 at 5 (Minn 1990). The court pointed out that Alaska's fornication statute had been repealed 11 years earlier in concluding that protection for unmarried, cohabiting couples was included. *Foreman v Anchorage Equal Rights Comm'n*, 779 P2d [1199] at 1201-1202 [(Alaska 1989)]. At the very least, before the state imposes sanctions on French, it must repeal the fornication statute.

Id at 7.

> It is simply astonishing to me that the argument is made that the legislature intended to protect fornication and promote a lifestyle which corrodes the institutions which have sustained our civilization, namely marriage and family life. If the legislature intended to protect cohabiting couples and other types of domestic partners, it would have said so.

Id at 8.

The state may regulate sex. *Bowers v Hardwick*, 106 SCt 2841 (1986). See also Laurence Tribe's diatribe against *Hardwick*:

> Unfortunately, the reality of the Court's privacy jurisprudence does not always parallel the caliber of its rhetoric. . . . [T]he Court found that there was no intimate association worthy of the Constitution's special protection.

Laurence Tribe, *American Constitutional Law* § 15-21 (Foundation Press, 2d ed 1988).

Rowan v United States Post Office Dep't, 397 US 728 (1970) sustains the statutory procedure in 39 USC § 3008 that Mr. Greeler and respondent Larson have not used to exclude *The Cohabitation Trap* from respondent Larson's home.

II. State Action

Timothy David (Butch) Greeler, the real party in interest, intends to isolate respondent Larson (see "Methods of Coercion" from Ann Jones, *Next Time She'll Be Dead* 90-91 (Beacon Press, 1994) (at page A-31) and censor any negative statement about his conduct. When he persuaded her to file her petition, he enlisted the court to assist him. The United States Supreme Court has refused to allow a court to enforce a law that violates anyone's civil rights. *New York Times v Sullivan*, 376 US 254 (1964)

(striking down a state rule that publishers of defamatory falsehoods are strictly liable in tort); *Shelley v Kraemer*, 334 US 1 (1948) (refusing to enforce a state rule against racially restrictive covennants); *Burton v Wilmington Parking Authority*, 365 US 715 (1961) (prohibiting a restaurant leased from a state from refusing service on the basis of race).

> The difference between these last cases and the school segregation case [*Brown v Board of Education*, 347 US 483 (1954)] is plain. In these cases, it is not so much the basic government action to which the litigants object: no one contended in these cases that government should not protect and regulate monopolies, punish trespassers, or permit creditors to protect their interests. Rather, the litigants, objecting to the acts of private parties, sought to portray as support or tacit approval what might be characterized as mere governmental acquiescence in certain acts, in order to obtain federal judicial assistance in discouraging the objectionable private activity. In deciding whether the litigants would indeed obtain that judicial assistance, the Supreme Court had to determine whether government inaction, acquiescence, or tolerance could fairly be judged to be tacit ratification of a challenged private choice or, perhaps, delegation of a public responsibility to a private party; if so, whether all such governmental silence or acceptance was itself a form of "state action"; and if not, whether any criteria exist for distinguishing varieties of inaction [lengthy footnote omitted].

Laurence Tribe, *American Constitutional Law*, § 18-1 at 1689 (Foundation Press, 2d ed 1988).

III. Domestic Abuse

Mr. Greeler's history of domestic abuse is well documented in *Greeler v Greeler*, Dist Ct File No DC 169608 (Hennepin Co Dist Ct, Minn 1994) (at page A-34). The district court had found:

> 7. That . . . [Mr. Greeler] had made statements to [his daughter] regarding burning down the house, leaving skeletons in the house and leaving with [his daughter].
>
> . . . .
>
> 9. That [Mr. Greeler] in open court admitted making the statements but could not believe that the minor child was frightened blaming any fear on [his ex-wife]. During his testimony, [Mr. Greeler] indicated that thoughts had come into

his head and he had spoken out loud and the child had overheard him.

. . . .

10. That . . . [Mr. Greeler] had appeared at school with a gun holster on for school conferences although [he] did not display a gun. [He] has threatened to come to the school when requested not to do so by the principal.

Id.

No one has dealt with the problems the real abuser causes. Ann Jones, a journalist, activist, and critic, says, in general:

> The battered women's movement arose among women from immediate need, not abstract theory. It was taken up by concerned policy makers largely for reasons of politics and economics, not justice. So we have a situation in which social action *precedes* the premise from which it should follow: namely, that all women have an absolute right to be free from bodily harm. It is no longer enough to offer some victimized women safety and sympathy, any more than it would have been enough to offer Rosa Parks that seat at the front of the bus without granting the principle of social equality behind it. Grant the principle and all the rest falls into place. For women in the United States, that principle has not yet been recognized.
>
> So it happens that while we profess to believe it wrong for men to beat women, we tend to make allowances in individual cases for men who do, finding in these cases particular circumstances which suggest that the woman is really to blame. Popular discourse derived largely from Freudian psychology and macho tradition fills our minds with prefabricated phrases, exonerating the abuser and blaming the victim. We understand that he was under "stress" of one sort or another, while she was emasculating, cold, provocative, self-destructive, hysterical, masochistic, and free to leave. . . .
>
> Knowing public attitudes, abused women often keep silent out of shame and a fear of being blamed, thereby appearing to acquiesce to violence. But if the abused woman appears complicitous, so do we; making excuses for the abuser in this case, blaming the victim in that case, we *approve* violence. Is it any wonder that battering continues?
>
> Our thinking about battered women is hindered by some pernicious habits of mind. First, there is the popular conviction

that if abused women seek help from the law, they get it, when in fact the law itself *contributes* to the abuse they undergo. Second, our general ignorance of the real nature and seriousness of battering. Third, the commingling in the popular imagination of sex, anger, aggression, and violence. And finally, and perhaps most important, the persistent tendency to blame victims for "their" problems. . . .

Ann Jones, *Next Time She'll Be Dead,* 13-16 (Beacon Press, 1994). Ann Jones explains the origins of the term "domestic Violence":

> "Domestic violence" is one of those gray phrases, beloved of bureaucracy, designed to give people a way of talking about a topic without seeing what's really going on. [Footnote omitted] Like "repatriation" or "ethnic cleansing," it's a euphemistic abstraction that keeps us at a dispassionate distance, far removed from the repugnant spectacle of human beings in pain. We used to speak of "wife beating"—words that brought to mind a picture of terrifying action, a big, heavy-handed man with a malicious eye, and a slight woman, dazed and bent, raising her arms against the blows, and crying out, "No!" Or we called it "wife torture," the words of Frances Power Cobbe that conjure scenes *between* beatings; the sullen husband, withdrawn and sulking, or angry and intimidating, dumping dinner on the floor, throwing the cat against the wall, screaming, twisting a child's arm, needling, nagging, manipulating, criticizing the [woman] who never does anything right, who's ugly and stupid, who should keep her mouth shut, who should spread her legs now, who should be dead, who will be if she's not careful. Dickens drew such scenes, and Hardy and D. H. Lawrence, Dostoevsky and Zola, Doris Lessing, Toni Morrison, Margaret Atwood, Alice Munro, Alice Walker, Joyce Carol Oates. But we prefer to speak of "domestic violence."

Ann Jones, *op cit* at 81. She continues:

> . . . . "Emerge," a Boston counseling program for men who batter, uses this working definition: violence is "any act that causes the victim to do something she does not want to do, prevents her from doing something she wants to do, or causes her to be afraid." And they note that "violence *need not involve physical contact with the victim,* since intimidating acts like punching walls, verbal threats, and psychological abuse can achieve the same results." Psychological abuse, which they

define as "behavior that directly undermines . . . self-determination or self-esteem," becomes "particularly powerful" when mixed with physical violence. Behavior you might not think of as "violence," behavior you might think of merely as getting things off your chest—such as "yelling, swearing, sulking, and angry accusations"—*is* violences if it coerces or frightens another person. And the likelihood of its doing just that increases exponentially when it's "'reinforced' by periodic or even occasional {physical} violence." [Footnote omitted].

It's vital to understand that battering is *not* a series of isolated blow-ups. It is a *process of deliberate intimidation intended to coerce the victim to do the will of the victimizer*. The batterer is not just losing his temper, not just suffering from stress, not just manifesting "insecurity" or a spontaneous reaction "provoked" by something the victim did or (as psychologists put it) "a deficit of interpersonal skills" or an "inhibition in anger control mechanisms." . . . . "I wasn't myself." "I was drunk." "I went bananas." "I lost it." "I went out of my mind." It's lines like these that provide a public excuse and deceive a battered woman into giving one more chance to the so-called *real,* nonviolent man underneath. But in fact that violence *is* himself, perfectly *in* control and *exercising* control.

. . . . No, the violent man is not out of control. He is a man at work on his own agenda, which is to train "his" woman to be what he wants her to be, and only what he wants her to be, all the time.

Those control skills have been well documented, and they resemble nothing so much as the tactics used by Nazi guards to control prisoners in the death camps, and by Chinese thought-reformers to brainwash American P.O.W.'s in Korea. Psychologist Alfred D. Biderman studied brainwashed American soldiers, and his work, augmented by strikingly similar accounts of political prisoners, hostages, and concentration camp survivors, was codified in a "chart of coercion" published by Amnesty International in 1973. That chart is often reproduced and handed out in support groups at shelters, and battered women come up with endless examples of the general methods in action.

Id at 88-92. The chart is reproduced at page A-31 showing comments of shelter support group members. The Minnesota Domestic Abuse Act is at page A-19.

IV. The General Rule of the Right of Expression

The state has the burden of showing that its regulation of expression is a narrow categorical exception or that the regulation is necessary to further a compelling state interest. Laurence H. Tribe, *American Constitutional Law* 832-33 (Foundation Press, 2d ed 1988).

A. The State's Motive

The state should not avoid the free speech guarantee of the first amendment by any guise. *McCulloch v Maryland*, 17 US (4 Wheat) 316, 423 (1819) (dictum) (Marshall, CJ): "[S]hould Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government . . . such an [enactment would not be] the law of the land."

The trial court should determine whether a state official had an improper motive to suppress particular speakers or messages in ordering the exclusion of advocacy organizations from a charity fundraising drive. *Cornelius v NAACP Legal Defense and Educational Fund*, 473 US 788, 813 (1985). The improper motive need not be the sole motive to justify invalidation.

> *Washington v Davis*, [426 US 229 (1976)] does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern. . . . When there is proof that a racially discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Arlington Heights v Metropolitan Housing Development Corp., 429 US 252, 265-66 (1977). See *Yick Wo v Hopkins*, 118 US 356 (1886).

B. Necessity for Narrow Exceptions

The state must narrowly draft a regulation of expression. *Village of Schaumburg v Citizens for a Better Environment*, 444 US 620 (1980), struck down an overbroad ordinance prohibiting door-to-door or on-street solicitation of contributions by charitable organizations that did not use at least 75 per cent of their receipts for charitable purposes as an "only peripherally promoted" interest that "could be served by measures less destructive of First Amendment interests." *Street v New York*, 394 US 576 (1969), reversed a conviction for words contemptuous of the flag.

"Whenever the harm feared could be averted by a further exchange of ideas, governmental suppression is conclusively deemed unnecessary." Tribe, *American Constitutional Law* 833-34. See also *Whitney v California*, 274 US 357 (1927) (Brandeis, J): "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression." In *Linmark Associates, Inc. v Township of Willingboro*, 431 US 85 (1977), Justice Thurgood Marshall struck down an ordinance prohibiting "For Sale" signs on houses to forestall "white flight," and he suggested that residents post "Not For Sale" signs.

1. Clear and present danger

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

Schenck v United States, 249 US 47 (1919). See *Frohwerk v United States*, 249 US 204 (1919), and *Debs v United States*, 249 US 211 (1919). Later, Justices Holmes and Brandeis dissented in support of the right of free speech in *Abrams v United States*, 250 US 616 (1919); *Schaefer v United States*, 251 US 466 (1920); and *Pierce v United States*, 252 US 239 (1920). As Justice Holmes said:

> Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly with the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth

> is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution."

Abrams v United States, 250 US 616 (1919).

2. Advocacy of Lawless Action

The state must limit its prohibition of advocating criminal syndicalism to advocacy (1) "directed to inciting or producing imminent lawless action" and (2) "likely to incite or produce such action." *Brandenburg v Ohio,* 395 US 444 (1969).

3. Fighting Words

In *Chaplinsky v New Hampshire,* 315 US 568 (1942), a Jehovah's Witness called a city marshal a "damned Fascist" and a "God damned racketeer" The Court sustained his conviction as the utterance of "fighting words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." However, in 1971, the Court found that the words on Mr. Cohen's jacket could not be prohibited as fighting words.

> [W]hile the particular four-letter word being litigated here is perhaps more distasteful than most others, it is nevertheless true that one man's vulgarity is another man's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

Cohen v California, 403 US 15 (1971). The state may not prohibit "obscene or opprobrious language toward . . . any member of the city police." *Lewis v City of New Orleans (Lewis I),* 408 US 913 (1972); *Lewis v City of New Orleans (Lewis II),* 415 US 130 (1974).

The Ku Klux Klan was allowed to march in Skokie, Illinois, the home of many survivors of the Holocaust. *Collin v Smith,* 447 FSupp 676 (ND Ill 1978), aff'd 578 F2d 1197 (7th Cir 1978), cert denied 439 US 916 (1978).

4. Defamation

In *Bowman v Heller,* 420 Mass 517, 651 NE2d 369 (1995), the defendant superimposed a photograph of the plaintiff's face on pornographic photographs of other women to make the plaintiff "look ridiculous," and circulated the altered photographs to five co-workers. The plaintiff was a candidate for president of the local union, but the

defendant denied that he intended to influence the election. The court found that the plaintiff was not a public figure like Rev. Jerry Falwell. *Hustler Magazine v Falwell,* 485 US 46 (1988). See *Gertz v Robert Welch, Inc.,* 418 US 323 (1974); *Time, Inc. v Firestone,* 424 US 448 (1976); and *Hutchinson v Proxmire,* 443 US 111 (1979).

5. Obscenity and Pornography

The Minnesota Supreme Court struck down a municipal ordinance banning nude dancing in Fairmont:

> Plaintiff's central attack on the Fairmont ordinance is based on alleged overbroad intrusion by the ordinance into freedom of expression. [footnote omitted]. The thrust of that attack is that nudity may be an integral part of protected forms of expression, e.g., dance performances, theatrical performances, etc. Therefore, plaintiff argues, an ordinance may not sweep broadly over these protected forms of expression under the guise of prohibiting certain conduct or forms of expression which might not be protected.
>
> The response to plaintiff's argument is that nudity is not protected expression, but conduct, which the city has a substantial interest in regulating via its police power. See *State v Ray,* 292 Minn 104, 193 NW2d 315 (1971). Nudity was a traditional common-law crime, an act malum in se. *Le Roy v Sidley,* 82 Eng Reprint 1036 (1663); *Truet v State,* 3 Ala App 114, 57 So 512 (1912). The state has a valid interest in prohibiting public nudity. As the Arizona Supreme Court put it:
>
> > " . . . The evil sought to be suppressed is not only the infliction of nudity upon a beholder's moral sensibilities, but also the public degradation and debasement of the individual exposed." *Yauch v State,* 109 Ariz. 576, 578, 514 P2d 709, 711 (1973).
>
> In addition to these moral interests, the city may have further valid interests in preventing public commercial exploitation of sex and acts of rape, prostitution, and other disruptive and disorderly conduct attendant thereto. see *California v LaRue,* 409 US 109 (1972).

Koppinger v City of Fairmont, 248 NW2d 708, 710-11 (Minn 1976).

> *[New York v] Ferber,* [458 US 747 (1982)] seems to signal a heightened sensitivity on the Court's part to the harms that pornographic activity can inflict upon *participants* in obscene

productions as well as viewers of the resulting materials. Previous opinions, as well as scholarly analyses, had tended to focus almost exclusively on the impact upon the reader or viewer of the obscene. [footnote omitted]. The difference between protecting children as viewers and children as participants is that between a child labor law as enforced in a newspaper shop——which is concerned not with what the paper says, but with the conditions under which children might be harnessed in its production—and a law that suppresses the newspaper because of what it says and the impact it might have on the reader.

In spite of this receptiveness to the regulation of obscenity and child pornography, the Court has insisted that "thematic obscenity" is fully protected as a form of speech, so that a state cannot, for example, ban distribution of a film on the ground that it advocates adultery or makes fornication seem like fun. [footnote omitted]. On this basis the Court has maintained that the regime it is permitting "is distinct from a control of reason and the intellect." *Paris Adult Theatre I v Slaton,* 413 US 49, 67 (1973). It may be that hardcore pornography has little ideological content—although hedonism is surely an idea—but the first amendment has not generally been confined to the protection of high-minded discussion among savants, and in *Cohen v California,* [403 US 15 (1971),] the Court reversed a conviction for wearing a jacket inscribed with the words "Fuck the Draft," reasoning that the Constitution protects the "emotive function" of communication no less than its "cognitive content." [footnote omitted]. That obscenity or pornography appeals to viewers at a subconcious level and elicits a response more visceral than cerebral hardly distinguishes it from a great deal of the most effective advertising or, for that matter, political rhetoric.

Laurence H. Tribe, *American Constitutional Law* 915-16 (Foundation Press, 2d ed 1988)

On January 4, 1984, Mayor Donald M. Fraser of Minneapolis vetoed an ordinance prohibiting pornography, which Catharine MacKinnon and Andrea Dworkin advocated to protect the civil rights of women:

During the last week, people all over America have heard the voices of women in Minneapolis who deplore the pervasive images of women in subordinate roles which continue to define women as second-class citizens. By authoring and supporting an amendment to our municipal law which would identify pornogra-

phy as a violation of the civil rights of women, feminist leaders in Minneapolis have attacked one aspect of the American culture which appears to covertly sanction violence against women.

The thoughtful discussion this proposed ordinance has evoked has been healthy for our community. The proponents have contributed new concepts through their skillful analysis of an issue rarely discussed in the public policy arena. They have brought the issue of pornography and its effects on women to national, if not international, attention. I applaud their leadership for social change. As the Mayor of Minneapolis responsible for the governance of this community, however, I must veto the Civil Rights ordinance which was passed by the City Council last Friday.

The remedy sought through the ordinance as drafted is neither appropriate nor enforceable within our cherished tradition and constitutionally protected right of free speech. The definition of pornography in the ordinance is so broad and so vague as to make it impossible for a bookseller, movie theater operator or museum director to adjust his or her conduct in order to keep from running afoul of its proscriptions. The ordinance needs more analysis and redrafting before a final judgement can be made as to whether or not it would then represent sound public policy and should be adopted.

. . . .

To the extent that this ordinance would bar obscene material it is redundant, because obscene material is now prohibited by law. The ordinance is broader, though. It seeks to ban material that is not obscene under existing law. The ban would apply to material that meets two requirements: it must be a) sexually explicit and b) degrading to women. But sexually explicit material that is not obscene is protected by the First Amendment. Also protected is the expression of abhorrent or detestable ideas such as the claim that women are mere sex objects or otherwise to be thought of in degrading terms.

. . . .

As drafted, the ordinance is too broad and vague to give notice as to what non-obscene material would be prohibited. This is particularly important because the ordinance expressly precludes any defense that the defendant did not know or intend the material to be pornographic or discriminatory against

women. The chilling effect of an overly broad ordinance is well known.

Donald M. Fraser, *Veto Message of Mayor of Minneapolis,* (January 5, 1984). The City of Indianapolis, Indiana, enacted the MacKinnon-Dworkin ordinance, and the federal courts struck it down. *American Booksellers Ass'n v Hudnut,* 598 FSupp 1316 (SD Ind 1984), aff'd 771 F2d 323 (7th Cir 1985).

V. Freedom of Speech: Defense to Harassment Claim

On May 10, 1995, Judge Edith H. Jones for the Fifth Circuit, decided a Title VII harassment claim against a female police officer:

> The principal issue in this case is whether a jury verdict for the plaintiff in a Title VII sexual harassment case may be supported only by evidence of a few written jibes, at women police officers generally and the plaintiff in particular, published in the police association newsletter. We hold that such evidence, rife as it is with first amendment overtones, will not suffice and so reverse the judgment.

DeAngelis v El Paso Municipal Police Officers Association, 51 F3d 591, 592 (5th Cir 1995). The court summarized the evidence, explained its weaknesses, and continued:

> Further, judged by the "totality of the circumstances" set out in *Harris [v Forklift Systems, Inc.,* ____ US ____, 114 SCt 367, 126 LEd2d 295 (1993)], this case is hardly as compelling as many reported Title VII sexually hostile environment claims. First, DeAngelis was subjected to no overtly discriminatory professional treatment. She was not a victim of ridicule before her promotion to become the first woman sergeant in the police department. see *Harris,* ____ US at ____, 114 SCt at 319; *Andrews v City of Philadelphia,* 895 F2d 1469, 1486 (3d Cir 1990) (derogatory and sexual remarks and conduct against female police officer). Second, no physical or sexual advances were made on DeAngelis, as has been characteristic of many hostile environment claims. See, e.g., *Waltman v Int'l Paper Co.,* 875 F2d 468 (5th Cir 1989) (female employee was repeatedly sexually groped and propositioned); *Carr v Allison Gas Turbine Div. Gen. Motors,* 32 F3d 1007 (7th Cir 1994) (co-workers of female tinsmith cut her overalls and accompanied exposure of themselves with lewd sexual innuendos); *Arnold v City of Seminole,* 614 FSupp 853 (ED Okla 1985) (female police officer

subjected to lewd and vulgar sexual comments and innuendos, and discriminatory employment action). Third, DeAngelis was not preyed upon by a superior whose actions could be interpreted as an abuse of power against a subordinate employee. *Harris*, ____ US at ____, 114 SCt at 369; *Jones v Flagship International*, 793 F2d 714 (5th Cir 1986) cert denied, 479 US 1065 (1987). She was herself in a command position. Fourth, apart from the claimed impact of the articles, there is no evidence of an atmosphere of sexual inequality or sexually demeaning treatment within the El Paso Police Department, her employer. On the contrary, representatives of the police department testified that they were embarrassed about and exhorted against the R.U. Withmi columns. Chief Scagno twice distributed memoranda throughout the police department condemning the R.U. Withmi columns. [footnote 5 omitted].

Because we have concluded that insufficient evidence supports DeAngelis' claim of a sexually harassing work environment, we do not reach the difficult question whether Title VII may be violated by expressions of opinion published in the R.U. Withmi columns in the Association's newsletter. Where pure expression is involved, Title VII steers into the territory of the First Amendment. It is no use to deny or minimize this problem because, when Title VII is applied to sexual harassment claims founded solely on verbal insults, pictorial or literary matter, the statute imposes content-based, viewpoint-discriminatory restrictions on speech.[1] See Eugene Volokh, *Freedom of Speech and Workplace Harassment*, 39 UCLA L Rev 1791 (1992); Kingsley R. Browne, *Title VII as Censorship: Hostile Environment Harassment and the First Amendment*, 52 Ohio St LJ 481 (1991). Whether such application of Title VII are necessarily unconstitutional has not yet been fully explored. But see *Robinson v Jacksonville Shipyards, Inc.*, 760 FSupp 1486 (MD Fla 1991). The Supreme Court's offhand pronouncements are unilluminating.[2]

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1. [6] We do not mean that sexual propositions, *quid pro quo* overtures, discriminatory employment actions against women or "fighting words" involve the First Amendment.

2. [7] The Court's pronouncement in *R.A.V.*, that "sexually derogatory "fighting words," among other words, may produce a violation of Title VII's general prohibition against sexual discrimination in employment practices" does not mean that Title VII

DeAngelis, 51 F3d 591, 596-97 (5th Cir 1995).

The United States District Court for the Central District of California held that the defendant fire department's sexual harassment policy violated the plaintiff's first amendment right to read *Playboy* in the fire station. *Johnson v County of Los Angeles Fire Department*, 865 FSupp 1430 (CD Cal 1994).

The court found that the regulation was based on content and poses "a particularly onerous restriction on First Amendment rights because they threaten the free marketplace of ideas." The court quoted *West Virginia State Board of Education v Barnette*, 319 US 624, 642 (1943):

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.
>
> * * *
>
> Defendants [in *Johnson v County of Los Angeles Fire Department*] offer two arguments to support the proposition that the prohibition is not, in fact, content-based. First, defendants argue that the policy only prohibits nude pictures, and nudity is not speech. See *Barnes v Glen Theatre, Inc.*, 501 US 560 (1991). This argument is spurious. [The regulation] does not by its terms apply to nude pictures, it applies to magazines which are "sexually oriented." Pictures of nude women which are not contained in sexually oriented magazines would not be covered by [the regulation]; similarly, sexually oriented magazines which contain no nudity are banned by [the regulation].
>
> The second argument proffered by defendants is that [the regulation] does not regulate the content of the magazines but rather the "secondary effects." *Renton v Playtime Theaters*, 475 US 41 (1986) (finding that regulation of adult theaters which was designed to prevent the decay of neighborhoods was content-

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trumps the First Amendment speech rights. Rather, as the next sentence in *R.A.V.* explains, conduct not targeted on the basis of its expressive content may be regulated. *R.A.V. v City of St. Paul, Minnesota*, ____ *US* ____, ____, *112 SCt 2538, 2546-47, 120 LEd2d 305 (1992)*. Citing *R.A.V.*, the Court in *Wisconsin v Mitchell*, ____ US ____, ____, 113 SCt 2194, 2200, 124 LEd2d 436 (1993) reiterated that conduct not targeted on the basis of its expressive content may be regulated by Title VII. However, application of Title VII to the "conduct" in the case *sub judice* would do precisely that—regulate speech on the basis of its expressive content.

neutral). This argument is equally unavailing. It is undisputed that [the regulation] is concerned with the communicative or emotive impact of the "sexually oriented" magazines. [footnote omitted]. Such communicative or emotive impact may be sexual arousal on the part of the male reader or offense on the part of an unwitting female viewer. The Supreme Court has consistently held that a government body cannot rely on the doctrine of "secondary effects" when the regulation is concerned with the emotive impact of the speech. See *Boos v Barry*, 485 US 312 (1988) (regulation prohibiting placement of signs near foreign embassies which would offend the foreign governments is content-based); *Cincinnati v Discovery Network, Inc.*, ____ US ____, 113 SCt 1505, 123 LEd2d 99 (1993) (regulation permitting distribution of newspapers but not commercial handbills is content-based); *Forsyth County v Nationalist Movement*, ____ US ____, 112 SCt 2395, 120 LEd2d 101 (1992) (city ordinances which charge fees for demonstrations based upon potential hostile response of public is content-based).

In short, [the regulation] is undoubtedly a content-based regulation. As such, the interference with plaintiff's First Amendment rights is particularly weighty.

Johnson v County of Los Angeles Fire Department, 865 FSupp 1430 (DC Cal 1994). See also *Bougie v Sibley Manor, Inc.*, 504 NW2d 493 (Minn App 1993) (facts include affair between plaintiff and one of the defendants with kissing, touching, other offers); *Klink v Ramsey County*, 397 NW2d 894 (Minn App 1986) (language, *Playboy*, "girly" magazines, no known touching).

VI. The Minnesota Harassment Statute

The Minnesota statute includes "acts, *words, or gestures*" in its definition. Minn Stat 609.748, subd 1(a)(1) (1994). The appellant mailed a copy of Laura Schlessinger, *The Cohabitation Trap*, 216 Cosmopolitan 92 (March 1994). This article does not come under any exception to the right of expression under the First Amendment.

Conclusion

The petitioner asks the Court to dissolve the restraining order, which abridges the freedom of speech and of the press protected by the First Amendment.

Respectfully Submitted,

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Opinion of the Minnesota Supreme Court

State of Minnesota
In Supreme Court
C0-95-1573

Hennepin County
District Court File No HA 95-3933

Kathleen Ann Larson, petitioner
State of Minnesota
Respondents

v

Steven Francis Ethier
Petitioner

Order

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Steven F. Ethier for further review be, and the same is, denied.

May 21, 1996

By the Court
/s/ A. M. Keith
Chief Justice

Opinion of the Minnesota Court of Appeals

State of Minnesota
In Court of Appeals
C0-95-1573

Hennepin County
District Court File No HA 95-3933

Kathleen Ann Larson, petitioner
State of Minnesota
Respondents

v

Steven Francis Ethier
Appellant

Considered and decided by Kalitowski, Presiding Judge, Short, Judge, and Mansur[3], Judge

Mansur, Judge

Appellant challenges the constitutionality of the trial court's imposition of a harassment order, restraining him from all unwanted contact with respondent. Appellant contends the mailing of an article to respondent Larson's home and expressing his opinions opposing sex outside marriage is constitutionally protected speech which the court cannot restrain within the context of a broad content-neutral restraining order. We disagree and affirm the court's order.

FACTS

Respondent Kathleen Larson and appellant Steven Ethier were drivers for the same cab company. Ethier is also a licensed attorney in Minnesota.

Alleging that Ethier had been harassing her for more than one year, Larson sought a harassment restraining order based upon the following facts: Ethier had entered her home uninvited and unannounced; he came uninvited to the funeral of Larson's mother, nor had Larson ever spoken about her mother to him; while at the funeral, Ethier talked to people, asking them questions about Larson; Ethier began frequenting two

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3. Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn Const Art VI § 10.

churches that Larson attended; Ethier had watched Larson arrive home late at night from his cab parked outside her house; Ethier threatened to flatten the tires of Larson's and her male roommate's cars; Ethier stated over the cab company radio to a coworker that Larson was going to hell and that she was living in sin; and Ethier mailed a photocopy of a magazine article on the pitfalls of cohabitation to Larson's home and to the home of Larson's father. Larson began telling Ethier to leave her alone in August 1994. In February 1995, Larson told Ethier over the cab company radio, with several people listening, to leave her alone.

The district court issued an order for harassment hearing and an ex parte temporary restraining order. Ethier filed and served a notice, pursuant to Minn R Civ P 24.04, of his intent to challenge the constitutionality of the harassment statute on its face and as applied here. The State of Minnesota, by its attorney general, intervened to defend the constitutionality of the statute.

At the evidentiary hearing, Ethier admitted mailing the cohabitation article and further testified that he was opposed to sex outside of marriage. He denied that his cab was ever in Larson's neighborhood. A coworker testified that Ethier explained to him that he wanted Larson for himself, that he did not trust Larson's roommate, and that he would do anything in his power to make sure Larson's roommate moved out.

The trial court found that Ethier had "engaged in behavior constituting harassment as defined in Minnesota Statutes 609.748 (1994)." The court did not specify which conduct constituted harassment. The trial court issued an order effective for two years directing:

> That [Ethier] shall not commit or cause to be committed any of the following:
>
> a. any repeated, intrusive, or unwanted acts, words, or gestures that are intended adversely to affect the safety, security, or privacy of [Larson] or [Larson's] family.
>
> b. any contact with [Larson]'s person, by telephone, or by other means or persons, directly or indirectly.

This provision mirrors Minn Stat § 609.748, subd 1(a)(1) (1994). The court's order also directed:

> That [Ethier] shall not park his vehicle in front of, or within sight of [Larson's] house.

DECISION

Determination of the constitutionality of a statute is a question of law, which this court reviews de novo. *In re Blilie*, 494 NW2d 877, 881 (Minn 1993). Ethier does not dispute the facts supporting the trial court's

finding that he harassed Larson. Where the facts are undisputed, this court may reverse only if it concludes that the trial court erroneously construed and applied the law to the undisputed facts. *Berge v Commissioner of Pub. Safety*, 374 NW2d 730, 732 (Minn 1985).

Ethier's constitutional challenge rests on his erroneous view that the application of the challenged statute to his unwanted mailing of an article to Larson's home constitutes a content-based restriction on his freedom of speech under the First Amendment of the United States Constitution. But the restriction here, imposed on Ethier under Minn Stat § 609.748 (1994), is content-neutral. The cases Ethier relies on, applying a strict scrutiny standard, do not apply to the content-neutral restrictions imposed here.

A content-neutral restriction on speech is a constitutionally permissible time, place, and manner restriction if it is "narrowly tailored to serve a significant governmental interest" and "it leaves open ample alternative channels for communication of the information." *Goward v City of Minneapolis*, 456 NW2d 460, 464 (Minn App 1990) citing *Ward v Rock Against Racism*, 491 US 781, 791 (1989)). We applied this standard in *Welsh v Johnson*, 508 NW2d 212, 215 (Minn App 1993), when we rejected an attack on Minn Stat § 609.748 by an abortion protester. In this case, the trial court concluded that nothing here leads us to a different result than the one reached in *Welsh*. We agree.

> The challenged statute defines "harassment" as, among other things:
>
> [R]epeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.

Minn Stat § 609.748, subd 1(a)(1) (1994). The statute provides that if a court finds harassment occurred, the court may, as it did here, issue a criminally enforceable restraining order limiting an individual's movements, communications, and associations as to the harassed party. *Id*, subds 5, 6.

Ethier's mailing constituted "harassment" as defined by the statute because it was "unwanted" by Larson and because it was "intended to adversely affect the safety, * * * or privacy" of Larson. Minn Stat § 609.748, subd 1(a)(1). Ethier has not challenged these facts, but only contends he has a constitutional right to target an individual and intrude on her privacy with his opinions and propaganda. He does not.

> So long as the [harassment restraining] order serves purposes unrelated to the content of the expression and is justified without reference to the content, it is facially neutral.

Welsh, 508 NW2d at 215.

Like the harassment restraining order in *Welsh*, the order Ethier challenges prohibits him from "any" communication with Larson, not just communication regarding his beliefs on cohabitation or sex outside marriage. The trial court's order contains no mention regarding the content of prohibited communication. Thus, like the order in *Welsh*, the order here is content-neutral. See *Welsh*, 508 NW2d at 215 (order prohibiting party "from any communication with Welsh, not just communication regarding his religious or political beliefs" was content-neutral).

The protection of residential privacy is a significant government interest. *Frisby v Schultz*, 487 US 474, 484 (1988)

> The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.

Id (quoting *Carey v Brown*, 447 US 455, 471 (1980)); *Welsh*, 508 NW2d at 215 (quoting same). It is constitutionally permissible for the state to restrict the communication of information to an unwilling recipient's home. *Frisby*, 487 US at 484-85. In short, "[t]here is simply no right to force speech into the home of an unwilling listener." *Id* at 485.

> [W]hen otherwise permissible acts are done with the intent to harass, whether at a home or not, governmental interests in the protection of its citizens are triggered.

Welsh, 508 NW2d at 215. Thus, application of Minn Stat § 609.748 to restrict all Ethier's communications to Larson, including his mailing of unwanted of materials to Larson's home, serves a significant government purpose.

> A restriction is
> narrowly tailored if it targets and eliminates no more than the exact source of the "evil" it seeks to remedy.

Frisby, 487 US at 485. Where, as here, the restriction bans communication that intrudes upon a targeted individual and residence, the order meets the narrowly tailored requirement of a time, place, and manner restriction. *Id* at 486.

Like the challenged order in *Welsh*, The order here does not close to Ethier audiences or avenues of communication for his views on cohabitation and sex outside marriage other than the contacting of Larson

and her family. Thus, the application of section 609.748 here "leaves open ample alternative channels for communication" of Ethier's beliefs regarding cohabitation and sex outside marriage. *Welsh*, 508 NW2d at 215 (citing *Goward*, 456 NW2d at 464).

Ethier has no First Amendment right to force speech into the home of an unwilling listener.

Affirmed.

/s/ Judge Mansur
March 15, 1996

Restraining Order

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

Kathleen Ann Larson
Petitioner

v

Steven Francis Ethier
Respondent

Order
Dist Ct File No HA 95-3933

The above-entitled matter came duly on before the undersigned Judge of the District Court on June 22, 1995 on Petitioner's motion for a Restraining Order and Respondent's challenge to the constitutionality of Minnesota Statutes. Section 609.748 (1994) under the First Amendment on its face and as applied in the above-entitled matter. The State of Minnesota by its Attorney General moved the Court, pursuant to Rule 24.04, Minnesota Rules of Civil Procedure, for an order permitting the State to intervene in this case to defend the constitutionality of the harassment statute. The Court has so ordered.

Both Petitioner and Respondent appeared personally, In addition, John S. Garry, Esq., assistant Attorney General, appeared for and on behalf of the State of Minnesota.

Based upon the files, records, and all of the argument,

THE COURT FINDS:

1. That Petitioner has filed a Petition for a Restraining Order.

2. That Respondent has been served with a copy of the Temporary Restraining Order and Respondent has been given notice of the time and place of the hearing on the Petition for a Restraining Order.

3. That Respondent has engaged in behavior constituting harassment as defined under Minnesota Statutes, Section 609.748 (1994).

4. That Section 609.748 is constitutional under the First Amendment both on its face and as applied in the above-entitled matter. Specifically, the Court finds that Respondent's claims of unconstitutionality fall well short of establishing that the harassment statute is invalid, either as applied or facially, under controlling constitutional standards. The Court, therefore, rejects Respondent's constitutional challenges to the statute.

Respondent's "As-Applied" Constitutional Challenge

Respondent's "as-applied" constitutional challenge to Minnesota Statutes, Section 609.748 (1994) must fail because the challenged harassment order is a valid time, place, and manner restriction. The Minnesota Court of Appeals decision in *Welsh v Johnson,* 508 NW2d 212 (Minn App 1993) upheld the harassment statute in question against an as-applied attack made under the same constitutional provisions invoked by Respondent here. Noting that First Amendment rights are not without limits, the *Welsh* court upheld the challenged harassment restraining order as a valid time, place, and manner restriction. *Id* at 215. The court emphasized that "when otherwise permissible acts are done with the intent to harass, whether at home or not, governmental interests in the protection of its citizens are triggered." *Id.*

The Court finds that there has not been a showing by Respondent of anything in the instant case that would serve to distinguish the holding of the Court of Appeals in *Welsh.*

Respondent's Facial Constitutional Challenge

Respondent's facial challenge to the harassment statute similarly must fail because the statute is neither overbroad nor vague. Respondent has failed to demonstrate the overbreadth of the statute. In general, "a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the grounds that it may conceivably be applied unconstitutionally to other, in other situations not before the Court." *Broadrick v Oklahoma,* 413 US 601, 610 (1973). An exception to this limitation on standing has been recognized to permit a party to assert the First Amendment free speech of others. *Id* at 611-12. Under this familiar overbreadth doctrine, only a statute that is substantially overbroad may be invalidated on its face. *New York v Ferber,* 458 US 747, 769 (1982). The Court finds that Respondent has failed to make a showing that the statute makes unlawful a substantial amount of conduct protected by the First Amendment. As has been emphasized by both the Minnesota and United States Supreme Courts, "the First Amendment overbreadth doctrine is 'strong medicine' to be employed with hesitation, and then 'only as a last resort.'" *State v Gray,* 413 NW2d 107, 113 (Minn 1987) (quoting *Ferber,* 458 US at 769). Accordingly, the Court rejects Respondent's facial challenge to the extent it is made under the overbreadth doctrine.

The Court finds that Respondent's facial challenge to the harassment statute which relies upon the due process void-for-vagueness doctrine

must fail as well. A person to whose conduct a statute clearly applies "'cannot complain of the vagueness of the law as applied to the conduct of others.'" *State v Normandale Properties, Inc.*, 420 NW2d 259, 262 (quoting *Village of Hoffman Estates v Flipside*, 455 US 489, 495 (1982)), rev denied, (May 4, 1988). Accordingly, to succeed with a facial vagueness challenge, "the complainant must demonstrate that the law is impermissibly vague in all of its applications." *Flipside*, 455 US at 497. In other words, a statute will be upheld against a facial vagueness challenge unless it is shown that "the statute proscribes no comprehensible course of conduct at all." *Normandale Properties*, 420 NW2d at 262. The Court finds that Respondent has not made such a showing or otherwise offered any permissible application. Therefore, Respondent's facial challenge to the statute fails to the extent it rests on a vagueness theory.

The Court further notes that any reliance upon the much-publicized decision of the United States Supreme Court in *R.A.V. v City of St. Paul*, ___ US ___, 112 SCt 2538 (1992) is misplaced because, unlike the ordinance at issue in *R.A.V.*, the harassment statute does not discriminate against the content of speech based on the viewpoint it communicates. The statutory language at issue here defines harassment as including "repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target." Minnesota Statutes, Section 609.748, subd 1(a)(1) (1994). This language on its face applies to all such harassment irrespective of any viewpoint that is being expressed by any speech component of the harassment. In other words, the statutory prohibition applies regardless of any particular religious, political, racial or other viewpoint being expressed through the acts, words or gestures constituting the harassment. Accordingly, the holding in *R.A.V.* is inapplicable to a consideration of the facial constitutionality of the harassment statute.

IT IS HEREBY ORDERED

1. That Respondent's "As-Applied" Constitutional challenge to Minnesota Statutes, Section 609.748 (1994) be, and hereby is, denied in its entirety.

2. That Respondent's challenge to the facial Constitutionality of said statute be, and hereby is, denied in its entirety.

3. That Respondent avoid harassment of Petitioner and members of Petitioner's family.

4. That Respondent shall not commit or cause to be committed any of the following:

a. any repeated, intrusive, or unwanted acts, words, or gestures that are intended adversely to affect the safety, security, or privacy of Petitioner or Petitioner's family.

b. any contact with Petitioner in person, by telephone, or by other means or persons, directly or indirectly.

5. That Respondent shall not park his vehicle in front of, or within sight of Petitioner's house.

6. That this Restraining Order shall be in effect for two years, or until the parties stipulate to release Respondent from the provisions of this Order, or by further Order of the Court.

7. That the Court Administrator serve copies of this Restraining Order to the Hennepin County Sheriff's Department and the Police Department of Minneapolis.

8. THAT VIOLATION OF THIS RESTRAINING ORDER BY AN ADULT CONSTITUTES A MISDEMEANOR AND MAY RESULT IN IMPRISONMENT FOR UP TO NINETY (90) DAYS OR A FINE OF UP TO $700.00 OR BOTH.

9. THAT VIOLATION OF THIS RESTRAINING ORDER BY A JUVENILE MAY RESULT IN DELINQUENCY PROCEEDINGS.

10. THAT A PEACE OFFICER ARREST WITHOUT WARRANT AND TAKE THE VIOLATING PARTY INTO CUSTODY IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON HAS VIOLATED THIS RESTRAINING ORDER.

June 27, 1995

By the Court
/s/ Franklin J. Knoll
Franklin J. Knoll

Petition for Harassment Restraining Order

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

In Re the Matter of
Kathleen Ann Larson
Petitioner
and
Steven Frank [*sic*] Ethier
Respondent

Petition for Harassment Restraining Order and Affidavit
Court File No HA 95-3933

The undersigned Petitioner, being sworn on oath states that:

1. I am the Petitioner in this action, which is a Petition for a Restraining Order. I am the victim of the harassment described in this Petition. This Affidavit is given in support of my Petition under Minn Stat § 609.748.

2. My name is Kathleen Ann Larson.
My address is 4757 Aldrich Ave. No. Mpls. Minn. 55430
My date of birth is 7/26/54.
Respondent's name is Steven Frank Ethier.
Respondent's address is 71 No. Ruth St. Paul, Minn. 55119.
Respondent's date of birth is unknown. Respondent is age 45.

3. My relationship to Respondent is that we are co-workers at All City Cab.

4. Pursuant to Minn Stat § 609.748, subd 1, the following are specific acts of harassment committed by Respondent. Harassment means repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another.

On March 3, 1995, the petitioner received a photo copy of an article, (unsigned, with no return address) on the pitfalls of cohabitation. A couple of days later, the petitioner's father received the same article. Just prior to that the respondent had told one of the petitioner's other co-workers that he was in love with the petitioner, and that he wanted her male room mate to move out of the petitioner's home. He had said this several times before. The respondent has told the petitioner's co-workers that cohabitation is a sin and that the petitioner is living in sin. Once over the cab radio the respondent stated that the petitioner was going to hell. He also stated that to one of his co-workers. The petitioner and the

respondent have never been friends and have never dated. Sometime in February 1994, the petitioner came home at about 4:00 a.m. She was later told by a third party that the respondent had told this third party that he was there watching the petitioner when she arrived at home. Sometime in 1995 the respondent told the petitioner's male room mate that one day the petitioner and her room mate would come out to find their cars would have flat tires. Sometime in September 1994, the respondent came to the petitioner's mother's funeral, uninvited and unwelcome. His cab was spotted by several people, and the respondent talked to people at the funeral about the petitioner to get information about her. After the funeral the respondent left a letter with the funeral director that stated that the petitioner had talked so much about her mother, that he felt like he knew her. The petitioner states that she had never talked about her mother to the respondent. Immediately after the funeral the respondent (who is a cab driver that drives for the same co. the petitioner drives for) checked in through the cab radio. He said he was at Holy Rosary Catholic Church. He then called again later that day to say that he was at St. Agnes Church. (He has called to say that he has been at one or the other churches every day since the petitioner's mother's funeral.) The petitioner states that the respondent knows she attends both churches, and that the respondent did not go to either church prior to meeting her. The petitioner fills like she is being stalked by the respondent. This type of behavior has been going on for about 1 1/2 years. Sometime around June 1994, the respondent came to the petitioner's home and walked in, uninvited. He stood in front of the petitioner and her sister-in-law, and just stared at them. The petitioner asked him to leave, and he did. The petitioner feels like the respondent is mentally unstable due to all the incidents that have taken place.

5. Based on this Affidavit, I request that an Ex Parte Temporary Restraining Order be issued granting me the following relief:

That Respondent cease or avoid the harassment of Kathleen Ann Larson.

That Respondent have no contact with Kathleen Ann Larson in person or by telephone or any other means or person.

6. I further request that a hearing be scheduled and that a Restraining Order be issued at the hearing.

Subscribed and sworn/affirmed
to before me this 7th day of
March, 1995
/s/ Susan Stein
Deputy Clerk of Court
or Notary Public

/s/ Kathleen Larson
Petitioner

United States Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

Minnesota Statutes

Section 609.34 Fornication

When any man and single woman have sexual intercourse with each other, each is guilty of fornication, which is a misdemeanor.

Minnesota Statutes

Section 609.748 Harassment; Restraining Order

Subdivision 1. Definition. For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes: (1) repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

(3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

(b) "Respondent" includes any individuals alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion: (1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subd. 2. Restraining order; jurisdiction. A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent or guardian of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.

Subd. 3. Contents of petition; hearing; notice. (a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. Upon receipt of the petition, the court shall order a hearing, which must be held not later than 14 days from the date of the order. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a sheriff was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

Subd. 3a. Filing fee waived. The filing fees for a restraining order under this section are waived for the petitioner. The court administrator and the sheriff of any county in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff is unavailable or if service is made by publication, without requiring the petitioner to make application under section 563.01. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has engaged in harassment.

(b) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order within 14 days after the temporary restraining order is issued unless (1) the time period is extended upon written consent of the parties; or (2) the time period is extended by the court for one additional 14-day period upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

Subd. 5. Restraining order. (a) The court may grant a restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if all of the following occur:

(1) the petitioner has filed a petition under subdivision 3;

(2) the sheriff has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the time and place of the hearing, or service has been made by publication under subdivision 3, paragraph (b); and

(3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. Relief granted by the restraining order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

(b) An order issued under this subdivision must be personally served upon the respondent.

Subd. 6. Violation of restraining order. (a) When a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor. A person is guilty of a gross misdemeanor who knowingly

violates the order during the time period between a previous conviction under this subdivision; sections 609.221 to 609.224; 518B.01 subdivision 14; 609.713, subdivisions 1 or 3; or 609.749; and the end of the five years following discharge from sentence for that conviction.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(c) A violation of temporary restraining order or restraining order shall also constitute a contempt of court.

(d) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (a).

Subd. 7. Copy to law enforcement agency. An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

Subd. 8. Notice An order granted under this section must contain a conspicuous notice to the respondent;

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to $700, or both, and that a subsequent violation is a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to $3,000, or both, and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

Subd. 9. Effect on local ordinances. Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance

which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

Domestic Abuse Act

Minnesota Statutes, Section 518B.01

Subdivision 1. **Short Title.** This section may be cited as the domestic abuse act.

Subd 2. **Definitions.** As used in this section, the following terms have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1, or criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, or 609.345.

(b) "Family or household members" means:

(1) spouses and former spouses;

(2) parents and children;

(3) persons related by blood;

(4) persons who are presently residing together or who have resided together in the past;

(5) person who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) person involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections 257.51 to 257.74. In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

Subd 3. **Court jurisdiction.** An application for relief under this section may be filed in the court having jurisdiction over dissolution actions in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged

domestic abuse occurred. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence in the action in the same manner and subject to the same limitations provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subd 3a. **Filing fee.** The filing fees for an order for protection under this section are waived for the petitioner. The court administrator and the sheriff of any county in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff is unavailable or if service is made by publication, without requiring the petitioner to make application under section 563.01. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.

Subd 3b. **Information on petitioner's location or residence.** Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

Subd 4. **Order for protection.** There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member personally or by a family or household member, a guardian as defined in section 524.1-201, clause (20), or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a petition on the minor's own behalf against a spouse of former spouse, or a person with whom the minor has a child in common, if the court determines that the minor has sufficient maturity and judgment and that it is the best interests of the minor.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief must state whether the petitioner has ever had an order for protection against the respondent.

(d) A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under chapter 257, 518, 518A, 518B or 518C. The court administrator shall verify the terms of an existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under subdivision 6, paragraph (a), clause (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

(e) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(f) The court shall advise a petitioner under paragraph (e) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to section 563.01 and shall assist with the writing and filing of the motion and affidavit.

(g) The court shall advise the petitioner under paragraph (e) of the right to serve the respondent by published notice under subdivision 5, paragraph (b), if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

(h) The court shall advise the petitioner of the right to seek restitution under the petition for relief.

(i) The court shall advise the petitioner of the right to request a hearing under subdivision 7, paragraph (c). If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing.

Subd 5. **Hearing on application; notice.** (a) Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order. If an ex parte order has been issued under subdivision 7 and a hearing is requested, the time periods under subdivision for holding a hearing apply. Personal service shall be made upon the respondent not less than five days prior to the hearing, if the hearing was requested by the petitioner. If the hearing was requested by the respondent after issuance of an ex parte order under subdivision 7, service of the notice of hearing must be made upon the petitioner not less

than five days prior to the hearing. The court shall serve the notice of hearing upon the petitioner by mail in the manner provided in the rules of civil procedure for pleading subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to five the respondent or petitioner the minimum notice required under this paragraph, the court may set a new hearing date.

(b) Notwithstanding the provisions of paragraph (a), service on the respondent may be made by one week published notice, as provided under section 645.11, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under paragraph (a).

Subd 6. **Relief by the court.** (a) Upon notice and hearing, the court may provide relief as follows:

(1) restrain the abusing party from committing acts of domestic abuse;

(2) exclude the abusing party from the dwelling which the parties share of from the residence of the petitioner;

(3) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;

(4) award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. Except for cases in which custody is contested, findings under section 257.025, 518.17, or 518.175 are not required. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and visitation shall in no way delay the issuance of an order for protection granting other reliefs provided for in this section;

(5) on the same basis as provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services;

(8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to pay restitution to the petitioner;

(11) order the continuance of all currently available insurance coverage with change in coverage or beneficiary designation; and

(12) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders to the sheriff or constable, as provided in this section.

(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate. When a referee presides at the hearing on the petition, the order granting relief becomes effective upon the referee's signature.

(c) An order granting the relief authorized in paragraph (a), clause (1), may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of notion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

(d) An order granting the relief authorized in paragraph (a), clause (2), is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

(e) If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

(f) An order for restitution issued under this subdivision is enforceable as civil judgment.

Subd 6a. **Subsequent orders and extensions.** Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order. The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(1) the respondent has violated a prior existing order for protection;

(2) the petitioner is reasonably in fear of physical harm from the respondent; or

(3) the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2.

A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

Subd 7. **Ex parte order.** Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;

(3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and

(4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not

to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. Upon request, a full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the ex parte order, if a hearing is requested by the petitioner, or not later than ten days or earlier than eight days from receipt by the court of a request for a hearing by the respondent. Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this subdivision must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing, and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Subd 8. **Service; alternate service; publication.** (a) The petition and any order issued under this section shall be served on the respondent personally.

(b) When service is made out of this state and in the United States, it may be proved by the affidavit of the person making the service. When service is made outside the United States, it may be proved by the

affidavit of the person making the service. taken before and certified by any United States minister, charge d'affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in the other country, including all deputies or other representatives of the officer authorized to perform their duties; or before an office authorized to administer an oath with the certificate of an officer of a court of record of the country in which the affidavit is taken as to the identity and authority of the officer taking the affidavit.

(c) If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means, or by publication, which publication must be made as in other actions. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment' the names and locations of the respondent's parents, siblings, children, and other close relative' the names and location of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent.

The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-order publication.

Subd 9. **Assistance of sheriff in service or execution.** When an order is issued under this section upon request of the petitioner, the court shall order the sheriff or constable to accompany the petitioner and assist in placing the petitioner in possession of dwelling or residence, or otherwise assist in execution or service of the order of protection. If the application for relief is brought in a county in which the respondent is not present, the sheriff shall forward the pleadings necessary for service upon the respondent to the sheriff of the county in which the respondent is present. This transmittal must be expedited to allow for timely service.

Subd 10. **Right to apply for relief.** (a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Subd 11 **Modification of order.** Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Subd 12. **Real estate.** Nothing in this section shall affect the title to real estate.

Subd 13. **Copy to law enforcement agency.** (a) An order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification information as to the existence and status of any order for protection issued pursuant to this section.

(b) If the applicant notifies the court administrator of a change in the applicant's residence so that a different local law enforcement agency has jurisdiction over the residence, the order for protection must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. If the applicant notifies the new law enforcement agency that an order for protection has been issued under this section and the applicant has established a new residence within that agency's jurisdiction, within 24 hours the local law enforcement agency shall request a copy of the order for protection from the court administrator in the county that issued the order.

(c) When an order for protection is granted, the applicant for an order for protection must be told by the court that:

(1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the applicant;

(2) the reason for notification of a change in residence is to forward and order for protection to the proper law enforcement agency; and

(3) the order for protection must be forwarded to the law enforcement agency having jurisdiction of the new residence within 24 hours of notification of a change in residence, whether notifica-

tion is given to the court administrator or to the local law enforcement agency having jurisdiction over the applicant's new residence.

An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

Subd 14. **Violation of an order for protection.** (a) Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor. Upon conviction, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court[s treatment order, the court must impose and execute the stayed jail sentence. A person is guilty of a gross misdemeanor who violates this paragraph during the time period between a previous conviction under this paragraph: sections 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.748, subdivision 6; 609.749; or a similar law of another state and the end of five years following discharge from that conviction. Upon conviction, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

(c) A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

(b) If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will

commit a further violation of the provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed $10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

(e) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (a).

(f) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.

(g) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.

A peace officer is not liable under section 609.43, clause (1), for a failure to perform a duty required by paragraph (b).

(h) When a person is convicted of violating an order for protection under this section and the court determines that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to the defendant.

(i) Except as otherwise provided in paragraph (h), when a person is convicted of violating an order for protection under this section, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction, and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

(j) Except as provided in paragraph (h), a person is not entitled to possess a pistol of the person has been convicted after August 1, 1996, of violating an order for protection under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(k) If the court determines that a person convicted of violating an order for protection under this section owns or possesses a firearm and used it in any way during the commission of the violation, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

Methods of Coercion

Method	Examples
ISOLATION	
Deprives victim of all social support for the ability to resist.	He moved me from my friends. He didn't want me to go anywhere unless he was with me. He would eavesdrop.
Develops an intense concern with self.	
Makes victim dependent upon interrogator.	
MONOPOLIZATION OF PERCEPTION	
Fixes attention on immediate predicament; fosters introspection.	I was always scared he'd blow up. I had to dress up for him. Give him sex whenever he wanted. I had to control the children so they wouldn't bother him. It was like walking on eggshells.
Eliminates stimuli competing with those controlled by captor.	
Frustrates all actions not consistent with compliance.	
INDUCED DEBILITY AND EXHAUSTION	
Weakens mental and physical ability to resist.	He wouldn't let me sleep. He started fights at night. He wouldn't let me see a doctor.
THREATS	
Cultivates anxiety and despair.	He threatened to kill the cat. He said he'd take the kids. He said he'd have me committed. He said he'd burn down the house. He said he'd find me if I left.

Method	Examples
OCCASIONAL INDULGENCES	
Provides positive motivation for compliance.	He took me on vacation. He bought me jewelry. He allowed me sex only when we "made up." Once in awhile he really listened to me and seemed to care.
DEMONSTRATING "OMNIPOTENCE"	
Suggests futility of resistance.	He beat me up. He had me followed. He called me deluded.
DEGRADATION	
Makes cost of resistance appear more damaging to self-esteem than capitulation.	He told me I'm too fat. He'd call me names and touch me inappropriately in public. He put me down intellectually and sexually and said I was ugly.
Reduces prisoner to "animal level" concerns.	
ENFORCING TRIVIAL DEMANDS	
Develops habit of compliance.	The bacon had to be cooked to a particular doneness. I couldn't leave a cup on the bathroom basin.

Source: Amnesty International, *Report on Torture* (1973), as adapted by the women's shelter of Northampton, Massachusetts.

Reprinted from Ann Jones, *Next Time She'll Be Dead* 90-91 (Beacon Press, 1994).

Greeler v Greeler

State of Minnesota
County of Hennepin

Fourth Judicial District Court
Family Division

Lori J. Greeler
Petitioner
and
Timothy Greeler
Respondent

Order
Court File No DC 169608

The above-entitled matter came duly on for hearing before Referee Diana S. Eagon on October 18, 1994.

Appearances

Mary E. McCormick, #203361, 4018 West 65th Street #5, Edina MN 55435, Esq., appeared for and on behalf of Petitioner.

Respondent appeared pro se.

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein,

THE COURT FINDS:

1. That the parties were before the Court on December 12, 1990 and the respondent was awarded custody of the minor child.

2. That both parties were required to refrain from making any disparaging remarks about the other party or to tell the child to lie to the other parent.

3. That the parties were next before the Court on March 14, 1991 pursuant to petitioner's motion to have the respondent held in contempt for denying visitation. The original Court Order of December 12, 1990 outlined specific visitation and respondent had taken it upon himself to modify that schedule.

4. That the Court found that the petitioner was entitled to make-up visitation because of visitation that was denied by the respondent.

5. That the Order of February 12, 1992 outlines some procedural history and interactions of the parties with Court Services.

6. That the initial Order of December 12, 1990 ordered Court Services to perform a custody evaluation, which evaluation was not completed and received by the Court until February 5, 1992. This evaluation recommended that custody be placed with the petitioner.

7. That on January 17, 1992 the child spoke with the Court Services Evaluator and related to the evaluator that the respondent had made statements to her regarding burning down the house, leaving skeletons in the house and leaving with Amanda.

8. That the petitioner's counsel brought an emergency Ex Parte Motion before the Court and received an Order granting petitioner custody on January 22, 1992.

9. That the respondent in open Court admitted making the statements but could not believe that the minor child was frightened blaming any fear on the petitioner. During his testimony, respondent indicated that thoughts had come into his head and he had spoken out loud and the child had overheard him. Later respondent told the child that he had no intention of burning down the house and he never intended to leave skeletons and that he was just speaking out loud a thought that he had.

10. That the minor child had nightmares following the respondent making these statements to her.

11. That the petitioner has had physical custody of the child since the Ex Parte Order with the parties returning to Court on several occasions. During some of this period of time respondent had supervised visitation.

12. That the parties have also been before the Court pursuant to petitioner's request for an Order for Protection in DA 191697 when an Order for Protection was granted in lieu of the Court finding that domestic abuse had occurred by respondent against petitioner.

13. That the Judgment and Decree in this matter was issued on September 4, 1992. Petitioner was granted sole legal and physical custody of the child, and respondent was granted specific visitation.

14. That petitioner is now asking that the Judgment and Decree be modified and that respondent be granted only supervised visitation as his actions have been emotionally abusive to the child.

15. That the conflict between the parties has been documented since this file was initially opened.

16. That with her Affidavit, petitioner submitted an Affidavit from the therapist that supervised visitation occur based upon interactions between the therapist and the child, the child experiencing sleep disturbances after she visits with the respondent and the child being bothered by statements made by the respondent to the child, including statements that the father will never see the child again and the father making negative statements about the mother and pressuring the child.

17. That petitioner also submitted with her Affidavit a transcript of a statement made by the school principal that she felt that the respondent

had made threatening statements to her. The respondent had appeared at school with a gun holster on for school conferences although the respondent did not display a gun. Respondent has threatened to come to the school when requested not to do so by the principal.

18. That the school social worker has been counseling with the child, and the child has indicated to the school social worker that the father has told the child to perform badly at school and to tell the school officials that she wishes to live with her dad.

19. That the child has made statements to school indicating that the respondent has been pressuring her, that he ignores her and if she could do anything she wanted she would stop seeing her dad.

20. That in March of 1994 when the minor child was with respondent for extended visitation the child telephoned petitioner to pick her up before the end of the visitation period. When she arrived at respondent's home, the child and respondent were waiting on the front steps with the child's suitcase and the child advised petitioner during the time of the visit the respondent kept telling the child that petitioner was destroying the child that petitioner and her family were no good and that the respondent accused the child of telling him lies.

21. That after the exchange of the child, the petitioner returned home and respondent left several messages on petitioner's answering machine very threatening in nature, both as to the petitioner and as to the minor child.

22. That respondent's actions caused profound sleep disturbances with the child and the child requested seeing a therapist which did occur.

23. That subsequent to the incident, the respondent packed up all of the child's things and had petitioner pick up these items.

24. That the petitioner has established a prima facie showing that respondent is verbally abusive and emotionally abusive to the minor child.

25. That the respondent objects to the limiting of visitation and is entitled to an evidentiary hearing. However, since petitioner has established a prima facie showing the Court will temporarily provide that respondent's visitation be supervised as the information submitted by petitioner if true would result in endangerment to the child's emotional health and impair the child's emotional development.

26. That the Court must appoint a Guardian ad Litem for the child if the Court finds that abuse has occurred. Since the Court has made the finding that the Affidavits submitted provide a prima facie showing of abuse of the child, the Court is appointing a Guardian ad Litem.

Petitioner earns $280 per week and receives $100 per month social security for the minor child. The respondent receives social security disability income and the parties qualify for the appointment of a Guardian ad Litem paid by Hennepin County.

27. That the Hennepin County Department of Court Services had performed a visitation evaluation dated June 7, 1993 and it is therefore necessary that this evaluation be updated in light of the most recent information.

IT IS ORDERED:

1. That respondent's visitation with the minor child shall be supervised.

2. That the Department of Court Services shall perform an update of their visitation evaluation, and may provide for psychological evaluations of the parties if deemed appropriate and make a written report to the Court with copies to counsel and the parties.

3. The parties, having been referred to the Department of Court Services for a visitation study, are to cooperate with that Department by appearing at all scheduled interviews at the time designated and cooperating with the assigned evaluator.

4. The parties shall follow the directions of the evaluator and complete all requested authorizations for release of information.

5. If either of the parties is non-cooperative, the investigator is to refer the matter back to the appointing Referee or Judge for such orders as may be necessary, including termination of the Visitation Study if that is warranted.

6. The sanction of Contempt for failure to comply with a proper Court Order may also be available.

7. That Hennepin County Department of Court Services shall provide supervised visitation for the minor child, which may be through Katahdin or Genesis II. The Hennepin County Department of Court Services shall recommend whether or not visitation shall continue to be supervised.

8. That the Court appoints Deborah A. Randolph, Esq., 701 Fourth Avenue South, Suite 500, Minneapolis MN 55415 Ph: 337-9563, as guardian ad litem.

9. That the guardian ad litem shall serve without bond.

10. That the guardian ad litem shall have the following authority:

a. The guardian ad litem shall be notified of all proceedings;

b. The guardian ad litem may initiate and respond to motion, conduct discover, call and cross-examine witnesses, make oral or written arguments or reports, and appeal on behalf of the child;

c. The guardian ad litem may arrange, coordinate, supervise visitation between the non-custodial parent and the child. The guardian ad litem may select any other qualified person or agency to supervise visitation as appropriate. The person selected by the guardian ad litem to supervise visitation shall be designated a special guardian ad litem upon filing with the Court a document naming said individual. The parents are ordered to cooperate with the guardian ad litem and with any person or agency chosen by the guardian ad litem to supervise the visitation.

11. That the guardian ad litem shall have access to any Hennepin County Department of Court Services or Child Protection/Child Welfare files without signed released from the parties. Both agencies and the guardian ad litem may mutually and freely exchange any and all information with the guardian ad litem regarding the parents and child.

12. That if the parties decline to sign releases of information giving access to the guardian ad litem to relevant information not in possession of Hennepin County, the guardian ad litem may bring a Motion for appropriate relief.

13. That the issue of visitation is continued to *February 9, 1995 at 9:00 a.m.*, at which time the parties shall appear before the Court at C-550 Hennepin County Government Center.

14. That copies of this Order shall be mailed to the guardian ad litem.

The Cohabitation Trap

by Dr. Laura Schlessinger

Cosmopolitan, v216 n3 p92(3) (March 1994)

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When I began a radio counseling program some fifteen years ago, it was rare for a caller to admit she was living with a man. Today, this no longer has a stigma attached to it.

The conventional wisdom in favor of living together before marriage is that it allows the couple to get to know one another and build a more solid foundation for their relationship than men and women who marry without having lived together.

Could this thinking be wrong?

Is Living-In Deadly to a Relationship?

According to psychologist David G. Myers, author of The Pursuit of Happiness, seven recent studies concur that couples who cohabit with their spouses-to-be have a higher divorce rate than those who don't. Three national surveys illustrate this: A U.S. survey of thirteen thousand adults found that couples who lived together before marriage were one-third more likely to separate or divorce within a decade. A Canadian national survey of fifty-three hundred women found that those who cohabited were 54 percent more likely to divorce within fifteen years. And a Swedish study of forty-three hundred women found cohabitation linked with an 80 percent greater risk of divorce.

Why Play Russian Roulette With Your Life?

Now, you and I both know how easy it is to discount all of that data! You simply say, "But my situation is different."

Well, for you, it could be true! It sometimes happens. But, it is not the rule. So why are you willing to play with your life? Why? Desperation. Fear of not having somebody—of not having a life if a man doesn't want you.

Perhaps waiting, becoming more mature and independent is too tough to do—especially when you are young and needy and hoping to escape an unhappy past.

Only You Can Make You Happy

Listen, the phrase is happily ever after. All of us grew up with that promise. So when you're an unhappy young woman, what better remedy than living with a man? The problem is that happiness just isn't won that

easily—and it's not a matter of who you are with but who they're with, i.e. you!

Only you have the power to make you happy. When you blindly leap for a man, you generally end up reliving the pain you've been trying to escape.

Denial and Living-In

Denial is a big factor in this live-in arrangement. And the styles of denial run from denial of one's own needs to denial of what he is really about.

If He Really Loved Me, Wouldn't He Marry Me?

Moving in with a man when you don't know how he feels about your future together is simply an attempt to try to make him feel he'd like to share his life with you. That's demeaning and dumb. It is about you auditioning.

Diana knew that. She and her boyfriend had been together for over a year and had been living together for five months. Although she claimed they constantly talked about marriage, actually she constantly talked about marriage. Her lover responded to her entreaties by saying he wanted to marry her, but he didn't know when because he didn't "feel ready."

"Should I stick around and wait? It could be five or six years," she said to me one day.

"Are you sure you're reading him right?" I asked. "He may not want to marry you. We can't really interpret what he means when he says he is not ready. But we can try to understand why you put yourself in this frustrating situation. You are living with him to audition, hoping to get the part of the bride. Am I right?"

"Yes," she said.

"But you haven't gotten the part," I added, "which means it wasn't a good plan. You want something to change, he doesn't. Contented people are not motivated to make changes. Do you agree?"

"Yes."

"So, you're the one who's going to have to make the changes. Get out of there! Date him. If you like him, date him!" I suggested.

"Well, that's what we've been talking about lately," she said.

"Sounds sensible."

"He also said he'd go into therapy with me and talk about this."

"That's nice too," I told her. "But right now, I'm not interested in him. I'm concerned about you. Diana, leave. Leave because living with

him is making you feel bad about yourself. That's why you shouldn't be there. It is damaging to you. Promise me you'll think about what I've said."

"I promise," she said, "and thanks. I really needed to hear this."

Living-In Is No Proof of Growth

All through this discussion, I had a feeling that Diana's relationship had solid potential but needed more space and time to grow. Moving in together seems to imply this growth process has already happened. Then, when things don't happen as fast as the woman thinks they should, she starts to feel powerless and depressed.

What Am I Still Doing Here If He Doesn't Want Me?

Jean, thirty, a part-time student with an independent income, had been living with her boyfriend for a year and a half. Before that, she'd been separated from her now ex-husband and hadn't been meeting many men. When she connected with her present man and they became close, "It felt wonderful," she said, "so we became closer, and I moved in." At this point, I couldn't figure out why she'd called me.

As she talked, the problems in her relationship became clear. Although Jean had no children, the man's seventeen- and thirteen-year-olds were living with them. The father was adamant—sometimes almost violent—about Jean's keeping her distance from them. "What does that mean?" I asked her. "You're not supposed to talk to them? Give them orders?"

"He doesn't want me to participate in their lives at all," she replied. "He always tells me, 'I just want you to take care of me, don't worry about them.'"

I still wasn't absolutely certain why Jean had called—until she mentioned that her man "goes through spells" when he wants her to leave, then relents. When she added, "I try to convince him that we have so much going for us...," I told her, "You can't convince somebody of that. Having that argument is a waste of time and demeaning to you."

Jean: Yes, but I keep saying to myself, "I need to leave. What am I doing here if he doesn't want me?"

Me: Notice how you don't ask yourself if you really want to be with him. I'm sure he wants you there. I'm sure he likes the sex, and you sound like a nice lady. . . .

Jean: I try to make everybody happy.

Me: What about you, Jean? Are you making yourself happy? Is he making you happy . . .? Can I be blunt?

Jean: Yes, please.

Me: This arrangement is very demeaning to you. You have no long-term commitment from him, yet he has made it clear that your position is to service him. He even seems to get some pleasure from making you feel insecure. And you know why you put up with it? Because you're too scared to be on your own. You're grateful to be owned because it relieves you of responsibility.

"Is that why I don't leave? Because I'm scared to take responsibility?" she asked.

"Right. You let your fear have all the power. You sold out. He is taking care of you in some ways—such as financially. But it's time you start to do that," I told here and she agreed.

Living-In Equals Giving In

Self-esteem is centered in the will to overcome circumstance, not to give in to being overcome. As in Jean's case, the giving in often takes the form of living-in. The results may be twofold: a roof over your head—and quicksand under your heart. Women have to know of their alternatives to "selling themselves." And they must be able to use their courage and creativity in ways that make them choosers, not beggars.

Don't Ever Settle for Less

Women often ask me how to get a man to respect them. My answer is always the same. If he doesn't treat you with respect, warm him and then dump him. Change comes only from within. He will change because he is ready, not because you want him to. But some women just don't get the message. They just keep hoping and trying, like Yolanda.

I Thought I Was in a Monogamous Relationship!

Yolanda, a thirty-eight-year-old social-services technician, called to discuss the fact that her live-in boyfriend of three years had admitted to spending the weekend with another woman. She was horrified that her fantasies of a monogamous relationship were dashed now that she knew he was fooling around.

I pointed out to Yolanda that when you move in with a man without a commitment, he already knows one crucial thing: He doesn't have to do much to get you. Then he fools around, and you stay, and he learns something more: He doesn't have to do much to keep you either. And that has to be crushing to your self-respect.

Yolanda was a bright, educated professional. I urged her to hold out for the right man, a man who would make a commitment to her, and

added that she wasn't going to find one while she was wasting her time with a man who didn't seem to respect her or to be interested in pleasing her. She was clearly furious at him and disillusioned and had the financial means to move out. I only hope she had the emotional ones as well.

Make No Mistake, Commitment Is a Big Deal

Now you might argue: "Big deal, a commitment. Commitments don't stop people from being abusive, unloving, unfaithful, or just plain annoying. Commitments don't even stop people from dumping each other. So—big deal."

Well, the statistics prove that commitment is a big deal; as I quoted earlier... compared to couples who don't cohabit with their spouses-to-be, those who do cohabit have higher divorce rates.

A Solid Foundation Requires Time, Effort, and Sacrifice

The interesting question is, why? There are probably many forces at work here, but I feel strongly that the main contributors are maturity, patience, and the ability to postpone gratification.

When people aren't willing to put in the time and effort to build a foundation, to build something solid and meaningful, they are usually not the ones to persist with effort and sacrifice to develop it and keep it going.

Having sex too soon, moving in without commitments or similar goals, are the behaviors of basically immature, let-me-feel-good-right-now people. The immaturity has to do also with not having develop an esteem and identity that permits you to be direct about your needs and feelings.

You're scared, so you play it safe. And then you find out safe doesn't always have the big pay-off! That's what my caller Sharon found out.

When You Want a Family, and He Doesn't

Sharon told me she had originally decided to move in with her boyfriend because she wanted "to get to know him better." And in fact, over the course of a couple of years, they had become close. In her words, "It's the ultimate, ideal relationship. He's wonderful to me, and I believe I am to him. We are very supportive of each other, have a lot in common, and enjoy each other's company." So why was she calling?

The problem was that Sharon had moved in without marriage on her mind (consciously, at least), and the subject hadn't been discussed. Now,

she found herself wanting marriage and a family, but her boyfriend didn't feel he was up to the greater responsibilities. And he was emphatic about it. So Sharon decided to avoid the issue for a while but got angrier and angrier with him.

"That isn't fair," I advised her, "because every step of the way, you made the choices. Like many women, you've been lying to yourself in the hope that the relationship will evolve. That's calculated risk. If you're able to erase the notion of marriage and babies from your mind, that's one things. But if you're kidding yourself in order not to lose him, that's a mistake!"

Short-Term Losses/Long-Term Winners

Imagine the choice Sharon is now facing. To leave a satisfying relationship or not. The immediate losses are obvious. The long-term gain is unpredictable. Often, when a woman states her intent to leave, suddenly the man, not wanting to experience great loss either, decides to take her demands seriously.

Good Decisions Require Objectivity

Nonetheless, as we go through life growing, changing, maturing, this type of crossroads experience is expected. No surprise. That's not the element that concerns me—that's just real life. My concern is that when relationships prematurely take on elements of sexuality and living-in, it makes it more difficult to have the objectivity required to make good decisions.

You're Too Busy Making Sure He Wants You to Question Whether You Want Him

Women do not move in to check out the man from closer range. Women move in to be protected, taken care of, to be wanted. And when you are in that frame of mind, you can't for a moment wonder whether you want the man; you're too busy making sure he wants you.

Controlling, petty, selfish, insecure, destructive, immature, and hurtful behaviors from the man in question become things to work around rather than qualities to examine, to decide on his worthiness to you! It is harder to ask yourself the very important question "Is this how I want to live the rest of my life?" when you are already dug in!

The Mate Makeover—A Study in Self-Delusion

Susan called me to discuss her boyfriend's immature and manipulative behavior.

Me: You live with him?

Susan: Yes.

Me: You got sexual too soon. You moved in too soon. You got engaged, and you are looking square into your future—and saying "yuchh." But instead of making a judgment, you are asking little-girl questions about how you can make him over.

Susan: Yeah, I guess so.

Me: And that's because once you've established all that you have, it is difficult to imagine backtracking. If you were simply dating, you'd look at his hypersensitivity and immaturity, be turned off, and not date him anymore—because you'd have a whole other life to fall back on. When you commit this much to living in, it makes it extremely hard to do what you need to do. So you tend to act like a Band-Aid rather than a scalpel when major surgery is required.

Dating as a Lease With an Option to Buy

Dating—not living-in—is supposed to be about learning and discerning. Dating is supposed to be a kind of lease with an option—so don't get sexual and cohabit right away and change the meaning of dating to a lease with permanent obligations.

He's the One Who Should Feel Guilty, Not You!

He says marriage is a big step of him, and you are supposed to feel guilty for wanting more. Don't be manipulated by that. And don't tolerate the suggestion that you are being manipulative. Grown-ups should know that they don't get the goodies legitimately unless they earn them. Look out for the word compromise if it ends up meaning you give up what is precious to you so that maybe you'll get what you want later.

Living Together and Maturity Go Hand in Hand

There are no relationships without problems. The issue is whether people have the maturity and the commitment to hang in there with each other and work out their problems. Do they have the inner strength and courage to admit to a mistake and let go? That's what makes the difference.

Live-in arrangements do not involve that kind of commitment. Living together is more a convenience and a fantasy; the former for men, the latter for you. As you've surely guessed by now, I'm very against it,

pragmatically. Not morally, but because I think the two people involved don't share the same agenda for being together.

Love Is About a Lot More Than Passion

So, couples have problems. But with maturity, caring, and commitment, they can work them out. Those are the relationships that the last and grow into love. Because love isn't instant. It takes years and working through problems together and nurturing each other's growth. That's what love is all about—and it involves a lot more than passion. It takes commitment.

Supreme Court, U.S.
FILED
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(2)

No. 96-585

In The

Supreme Court of the United States

October Term, 1996

STEVEN F. ETHIER,

Petitioner,

vs.

KATHLEEN ANN LARSON
and STATE OF MINNESOTA,

Respondents.

On Petition For Writ Of
Certiorari To The
Minnesota Court Of Appeals

BRIEF IN OPPOSITION OF RESPONDENT STATE OF MINNESOTA

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QUESTION PRESENTED

Does a harassment restraining order issued under Minn. Stat. § 609.748 (1994) violate the First Amendment as applied because the conduct that is barred by the restraining order, and which satisfied the statutory requirements for its issuance, consists in part of the unwanted mailing of a magazine article to the harassment victim's home with the intent to adversely affect her privacy?

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BRIEF IN OPPOSITION

Respondent State of Minnesota respectfully requests that the Court deny the petition for writ of certiorari seeking review of the decision of the Minnesota Court of Appeals in this case, for which the Minnesota Supreme Court denied a petition for discretionary review. The opinion of the Minnesota Court of Appeals (Pet. App. A2-A6) is unreported but available at 1996 WL 146456.

JURISDICTION

The decision of the Minnesota Court of Appeals sought to be reviewed was filed on April 2, 1996. The Minnesota Supreme Court denied a petition for discretionary review by order dated May 21, 1996. This Court's jurisdiction to review the decision of the Minnesota Court of Appeals on a writ of certiorari rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

U.S. Const. amend. XIV, § 1 provides in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Minn. Stat. § 609.748 (1994), under which the challenged harassment restraining order was issued, is set out in full at Pet. App. A14-A18. The statute, in subdivision 1(a)(1), defines harassment in relevant part as:

> repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.

STATEMENT OF THE CASE

This case presents an as-applied First Amendment challenge by Petitioner Steven F. Ethier, attorney pro se, to the restriction imposed on him under the Minnesota harassment restraining order statute, Minn. Stat. § 609.748 (1994). The crux of Ethier's constitutional claim is that the application of section 609.748 in this case should be subjected to strict scrutiny as a content-based restriction because the conduct that is barred by the restraining order against him, and which satisfied the statutory grounds for issuing the order, consists in part of his unwanted mailing of a magazine article on the pitfalls

of cohabitation before marriage to the home of the harassment victim, Respondent Kathleen Ann Larson, which was done with the intent to adversely affect her privacy. The Minnesota Court of Appeals held that the challenged harassment restraining order is content neutral and, as such, is a constitutionally permissible time, place, and manner restriction. Pet. App. A4-A6. The court concluded that Ethier's position amounted to the assertion of a nonexistent First Amendment right "to target an individual and intrude on her privacy with his opinions and propaganda." *Id.* at A4.

On March 7, 1995, Larson filed a petition in Hennepin County District Court in Minnesota under section 609.748 for a harassment restraining order against Ethier. That same day the district court issued to Ethier an Order for Harassment Hearing and Ex Parte Temporary Restraining Order. Upon agreement of the parties, a referee of the court continued the harassment hearing from March 21, 1995 to May 23, 1995, with the temporary restraining order to remain in force in the meantime.

Ethier then filed and served a notice, pursuant to Minn. R. Civ. P. 24.04, of his intent to draw into question the constitutionality of section 609.748 on its face or as applied under the First Amendment and the parallel free speech provision of the Minnesota Constitution. At the hearing on May 23, 1995, the district court continued the case to permit the State of Minnesota by its Attorney General to intervene to defend the constitutionality of the statute, keeping the temporary restraining order in force during the interim. In so doing, the court took specific note of the fact that Larson was proceeding pro se while Ethier is himself a licensed attorney.

At the full hearing that followed on June 22, 1995, the district court granted the unopposed motion of the State to intervene pursuant to Minn. R. Civ. P. 24.04, heard argument on Ethier's constitutional challenge to section 609.748, and took evidence on Larson's allegations of harassment. Larson's petition for a restraining order, made under oath, stated that she and Ethier were drivers for the same cab company and alleged that he had been harassing her for over a year. Larson alleged, and there was supporting testimony at the hearing, that Ethier harassed her by: (1) entering her home uninvited and unannounced and then staring at her; (2) watching her arrive home late at night from his cab parked outside her house; (3) coming uninvited to the funeral of her mother and leaving an inappropriately familiar sympathy card for Larson with the funeral director; (4) afterwards frequenting the same two churches that Larson attended but which Ethier did not previously attend; (5) threatening to one day flatten her car tires and those of her male roommate; (6) telling one of their co-workers that he wanted Larson's male roommate to move out of her home;[1] and (7) anonymously mailing a magazine article on the pitfalls of cohabitation before marriage to Larson's home and, four days later, to her father. At the hearing, Ethier admitted mailing the article and further testified that he was opposed to sex outside marriage.

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[1] The co-worker testified that Ethier had said this was because he wanted Larson for himself and did not trust her roommate, and that Ethier had also said he would do everything in his power to make sure Larson's roommate moved out.

On June 27, 1995, the district court issued a two-year harassment restraining order against Ethier, finding that Ethier had engaged in behavior constituting harassment under section 609.748 and that the statute is constitutional both on its face and as applied in this case. Ethier has not challenged the district court's finding that he engaged in behavior constituting harassment, which is defined by the statute in pertinent part as "repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target." Minn. Stat. § 609.748, subd. 1(a)(1) (1994). Under the terms of the restraining order, Ethier is prohibited from contacting Larson by any means and must avoid harassment of her and her family. Pet. App. A7-A10. These terms mirror those set forth in Minn. Stat. § 609.748, subd. 5(a) (1994). The order also directs Ethier not to park his vehicle in front of or within sight of Larson's home. Pet. App. A10.

Ethier appealed this order to the Minnesota Court of Appeals. On appeal, the facts of Ethier's harassment of Larson were undisputed, including that his anonymous mailing was unwanted by her and intended by him to adversely affect her privacy. Pet. App. A2-A4. Nor did Ethier pursue an overbreadth or other facial challenge to section 609.748. He argued only that the statute as applied in this case violates the First Amendment under the strict scrutiny standard. The premise of this argument was that the application of the statute to behavior by him that includes his unwanted mailing of the magazine article to Larson's home constitutes a content-based restriction on his freedom of speech. Pet. App. A4.

In its opinion filed April 2, 1996 affirming the trial court, the Minnesota Court of Appeals rejected this premise and, with it, use of the strict scrutiny standard. The court of appeals concluded that the challenged harassment restraining order is content neutral and that Ethier has no constitutional right to force speech into the home of an unwilling listener. Pet. App. A4-A6. Based on these conclusions, the court used instead the First Amendment standard for a permissible time, place, and manner restriction and held that the application of section 609.748 in this case satisfies all the requirements of that standard. Pet. App. A4-A6.

Ethier petitioned the Minnesota Supreme Court for discretionary review and, as in the court of appeals, argued only that strict scrutiny should apply. The Minnesota Supreme Court denied the petition by order dated May 21, 1996.

Ethier mailed to this Court a petition for writ of certiorari and appendix on August 19, 1996. By letter dated August 23, 1996, the Clerk of Court directed Ethier to redo the petition and appendix to correct errors in its form. Ethier then filed the instant petition and appendix, in which he has asserted purported facts and grounds for reversal not presented to the courts below and not included in his original petition and appendix to this Court.

REASONS FOR DENYING THE PETITION

There is absolutely no sound reason for the Court to grant review in this case, much less the requisite "compelling reasons." Sup. Ct. R. 10. The decision of the Minnesota Court of Appeals is fully consistent with this Court's relevant First Amendment precedents, which have not applied strict scrutiny to content-neutral restrictions on expressive activities and which have refused to recognize a First Amendment right to force speech into an unwilling listener's home. Further, Ethier's petition improperly relies on alleged facts that are not part of the record in this case and also improperly asserts purported grounds for review which were not argued below or in his original petition to this Court.

I. THE MINNESOTA COURT OF APPEALS' DECISION CORRECTLY DECLINED TO APPLY FIRST AMENDMENT STRICT SCRUTINY IN THIS CASE BECAUSE THE HARASSMENT RESTRAINING ORDER IMPOSED AGAINST PETITIONER UNDER MINN. STAT. § 609.748 (1994) IS CONTENT NEUTRAL IN BOTH ITS TERMS AND THE GROUNDS FOR ITS ISSUANCE.

The only relevant legal argument discernible from the petition is that Minn. Stat. § 609.748 (1994) as applied in this case is unconstitutional under First Amendment strict scrutiny.[2] The sole basis identified for applying

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[2] The First Amendment applies to the states under the Due Process Clause of the Fourteenth Amendment. 44 *Liquormart, Inc. v. Rhode Island*, ___ U.S. ___, ___, 116 S. Ct. 1495, 1501 n.1 (1996).

such scrutiny here is that the restriction imposed on Ethier under the statute is content based because his harassing conduct includes the unwanted mailing to Larson's home of a magazine article on the pitfalls of cohabitation before marriage. Ethier contends in essence, as he did below, that the harassment restraining order violates his First Amendment rights because the cohabitation article does not fit within any of the narrow categories of proscribable speech, such as obscenity or fighting words, and therefore a restriction on his dissemination of the article is valid only if necessary to achieve a compelling state interest. Pet. at 8, 17; *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 395-96 (1992) (reiterating that content-based restrictions must satisfy this strict scrutiny standard).

The Minnesota Court of Appeals correctly rejected this argument as contrary to controlling First Amendment precedent. Under that precedent, it is clear that the challenged harassment restraining order is content neutral in both its terms and the grounds for its issuance, and thus is not subject to strict scrutiny.

In determining whether a restriction on expressive activity is content neutral, "[t]he government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). The purposes served by the application of section 609.748 in this case are the protection of residential privacy and the protection of citizens from acts of intentional harassment. Pet. App. A5. These purposes are plainly unrelated to the content of any expression made by Ethier through his act

of anonymously mailing the cohabitation article to Larson's home.

Moreover, the challenged restraining order serves its protective purposes by prohibiting Ethier from any communication with the harassment victim, not just communication regarding his beliefs on cohabitation or sex outside marriage. The order is therefore clearly content neutral in its terms. As the Minnesota Court of Appeals stated, the order "contains no mention regarding the content of prohibited communication." Pet. App. A5.

The result is no different to the extent Ethier suggests that the restraining order is content based because his anonymous mailing of the cohabitation article was part of the conduct satisfying the statutory grounds for issuing the order. Such a suggestion ignores the undisputed fact that the mailing constituted "harassment" as defined in the statute only because it was unwanted and intended by Ethier to adversely affect Larson's privacy. Minn. Stat. § 609.748, subd. 1(a)(1) (1994). Thus, the statute made this part of Ethier's conduct "harassment" without regard to the viewpoint or subject matter of the article. His act of mailing the article would have constituted harassment under the statute regardless of whether that act had expressed some other viewpoint, concerned some other subject matter, or communicated no message at all. It is clear, then, that the statutory basis for the restraining order in this case is content neutral with respect to both viewpoint and subject matter. *See Burson v. Freeman*, 504 U.S. 191, 197 (1992) (reiterating that to be content neutral, a restriction cannot apply either to only a particular viewpoint or to only a particular topic of speech). Because, like all his other unwanted conduct upon which the

restraining order is based, Ethier's mailing of the cohabitation article was done with the intent to adversely affect Larson's privacy, it would have been harassment under the statute whether the article had dealt with politics, sports, food or any other topic.

In short, the governmental purposes served by the restraining order in this case were triggered by the intent to harass, irrespective of what, if any, moral, religious or other underlying message any of the acts of harassment were meant to convey. Because the statutory grounds for the order are in this way " '*justified* without reference to the content' " of any speech by Ethier, they are as content neutral as the terms of the order itself. *Ward*, 491 U.S. at 791 (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)) (emphasis added in *Ward*).

Since the harassment restraining order issued against Ethier under section 609.748 in this case is content neutral, the order is a constitutionally permissible time, place, and manner restriction if it is narrowly tailored to serve a significant governmental interest and leaves open ample alternative channels for communication of the information. *Ward*, 491 U.S. at 791. Ethier does not dispute that the Minnesota Court of Appeals correctly held that all the requirements of this more lenient First Amendment standard are satisfied here. Indeed, this Court has stressed that " '[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.' " *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)).

In sum, the petition identifies no basis for this Court's review of the decision of the Minnesota Court of Appeals. The decision is fully consistent with well-established First Amendment law in its refusal to apply strict scrutiny to a content-neutral restriction on expressive activity. Contrary to Ethier's view, "[t]here simply is no right to force speech into the home of an unwilling listener." *Frisby*, 487 U.S. at 485. There is no reason for the Court to revisit this principle, and thus no basis under the First Amendment for exempting this part of Ethier's harassing conduct from application of section 609.748.

II. THE PETITION RELIES ON ALLEGED FACTS NOT IN THE RECORD AND ASSERTS PURPORTED GROUNDS FOR REVIEW NOT ARGUED BELOW OR INCLUDED IN THE ORIGINAL PETITION.

The purported facts set out in the fourth, sixth and seventh paragraphs of the petition's statement of facts, Pet. at 1, are not part of the record in this case. By these additional "facts," Ethier asserts that Larson's male roommate received social security disability benefits while employed, was fired from his job, left threatening messages on Ethier's answering service, and that a 300-pound reputed enforcer for the Hell's Angels personally threatened Ethier. *Id.* Because they are outside the record, these "facts" cannot be used to support the petition.

In any event, these "facts" are completely irrelevant to the constitutional issue in this case. The only point to which they may possibly relate is Ethier's apparent argument that the harassment restraining order is somehow

infirm because, by his current account, Larson sought it at the request of her male roommate, whom Ethier believes is abusive. *Id.* at 3-4. Such an argument has nothing at all to do with whether the Minnesota Court of Appeals erred by not applying strict scrutiny. Additionally, no such argument for reversal was presented to the courts below and therefore cannot be made here.

The petition is improper for the further reason that it went well beyond correcting the errors of form noted in the Clerk of Court's letter regarding the original petition. The instant petition has added "facts" and appendix material, altered the phrasing of arguments, and asserted new purported grounds for review. Section III of the petition, a disjointed and irrelevant discourse on domestic abuse, was not included in the original petition and thus amounts to an impermissible attempt to assert pre-existing grounds for review beyond the 90-day deadline for petitioning this Court. *See* Sup. Ct. R. 13, 14.5, 15.8.

Any latitude the Court might otherwise give to pro se litigants on such matters is inappropriate here given that Ethier is himself a licensed attorney. These improper aspects of the petition only underscore the lack of legal merit in his constitutional challenge.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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